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19.02.010 Introduction. Modoc County is a general law county and, as such is a political subdivision of the state of California, having corporate powers and exercising the sovereignty of the state within its boundaries, as provided in the California Constitution, those powers specified by statute and those necessarily implied therefrom. [Govt. Code Sections 23000 through 23003, inclusive].

The county's powers can only be exercised by the Modoc County board of supervisors (hereinafter referred to as the "board") or by agents and officers acting under the authority of the board. [Calif. Const., Article XI, Section 1, subdivision (b); Govt. Code Sections 25000--26400].

The board serves as the chief executive authority of the county government and is charged by law with performing all duties necessary to the full discharge of these specified and implied executive duties. [Govt. Code Section 25207].

One of the critical duties of the board is to supervise and protect the tax base of the county. [Govt. Code Section 23004]. The board is also charged with the duty of establishing a general plan outlining the present and future authorized uses for all lands in the county and to identify the county's environmental, social and economic goals. [Govt. Code Sections 65000, et seq.; See also *Village of Euclid v. Ambler Realty Company* (1926) 272 U.S. 365 (71 L.Ed. 303); *McCarthy v. City of Manhattan Beach* (1953) 41 Cal.2d 879; *Consolidated Rock Products Company v. City of Los Angeles* (1962) 57 Cal.2d 515, appeal dismissed, 371 U.S. 36. Such a plan has been adopted by the board and was last reviewed and updated in September of 1988.

In that General Plan, the county's historical natural resources, health and safety issues, aesthetic and cultural resources, land use, population, economy, housing and facilities and services are reviewed and discussed.

As the county's governing body, the board is charged with governing Modoc County in the best interest of all its citizens.

The board is well aware that the historical, overriding and predominant goal of the county's citizens, and therefore its government, has been the continuation of a lifestyle which assures quiet enjoyment of private property rights and property interests and assures the highest degree of protection of these rights. Property rights and interests are important to the independent people who live and work in this rugged, mostly remote county which has an enormous land mass larger than some states in the Union but a population as small as some villages. People who live in this county are reliant upon the land and its productive use. Private ownership and the incentive provided by private ownership is the driving force which supports the livelihood of all Modoc County citizens.

The board is also well aware that at this time federal and state managed lands make up over three-quarters of the land mass of Modoc County and that there are continuing efforts to increase that amount. Moreover, Modoc County's economy is dependent on business activities on federal and state managed lands and these activities are inseparably tied to the remaining portion of private land in Modoc County. To a substantial degree the county and its people are at the mercy of state and federal planning decisions, often to the detriment of local communities and citizens, and the board is of the opinion that such circumstances are contrary to the basic principles of freedom and liberty, and sound resource management.

Believing that the American concept of "government of the people, by the people and for the people" is best served when government affairs are conducted as close to the people as possible (i.e. at the county level), the board in carrying out its specified and inherent duties to

operate the government of Modoc County in the best interests of all its citizens and to protect and preserve the county's tax base, has found it necessary to expand its land use planning efforts into the area of planning for the use and management of federally and state managed lands in the county.

The board has reached that decision because of the massive portion of land in the county that is managed by either the federal or state government and because the use and management of that land has severe impact on the economic stability of Modoc County. The board is therefore legitimately interested in fully participating in the planning process utilized by federal and state agencies for determining and implementing their land use plans for managing lands located in the county. The board's interest extends to plan formulation, development and implementation (which includes monitoring and evaluating implementation). (Ord. 311 §1(part), 1995)

19.02.020 Custom, culture and economic base of Modoc County. Historically the custom and culture of Modoc County is a story retold in many western counties. Located at the convergence of the Lassen and Applegate trail, the settlement of the county is the history of the livestock, farming, logging, mining, wildlife and railroad industries, led by hardy individuals willing to work and develop the resources of the land to bring forth a community. The settlement of the county is based on the beneficial use of the land at a time in history which precedes the misguided regulatory efforts which today threaten that same custom and culture.

The people of Modoc County have historically and traditionally earned their livelihood from activities reliant upon natural resources. The economy of the county has always been and is today, dependent upon and economically related to the availability and utilization of natural resources and reasonably accessible water supplies. Either directly or indirectly, the majority of the persons employed in Modoc County are dependent upon ranching and farming, forest production, mining, recreation, and other activities related to and reliant upon the availability of natural resources.

The land which produces the natural resources critical to the economy of Modoc County is either managed by federal or state agencies or is vitally affected by land managed by federal or state agencies. The economy of the county is dependent upon commercial and business activities which are operated on the federal and state managed lands. Those activities include timber cutting, mining, livestock grazing, and commercial and recreational activities. These

commercial and business activities form the base for the economic stability of the county and are inseparably and vitally tied to the viable and effective use of private lands in the county. Since less than one-fourth of the land mass of the county is privately owned, it is obvious that viable and effective use of that private land is totally dependent upon a management style and technique for the federal and state managed land and water which is compatible with the commercial and business activities which form the custom and culture of the county and which provide the base for the economic stability of the county.

Recognizing the critical tie between use of the federal and state managed lands and the economic stability of the county, the board developed the land use planning process to serve as a guide to the planning and management of the use of federally and state managed lands and resources. The board will actively and positively work to maintain the traditional, historical livelihood of the county's citizens and to preserve the county's custom, culture and economic stability. The board will also actively and positively work to protect private property rights, private property interests and investment backed expectations and to facilitate a free market economy. The board will actively and positively work to provide a voice for individual citizens and for local communities in planning the future of the county. The board's purpose and goals are lofty, and they will be successfully implemented only with a vital on-going planning process. The board initiated the process by appointing the Modoc County land use committee (hereinafter referred to as "land use committee") and charging its members with the task of developing and recommending a land use plan to provide a general planning framework within which the board's purposes and goals can be successfully pursued. This land use plan is the result and supersedes the Modoc County Interim Land Management Plan, adopted by resolution of the board on May 18, 1992. (Ord. 311 §1(part), 1995)

19.02.030 Multiple use and coordination with federal and state agencies. This plan provides a positive guide for the land use committee and the board to coordinate their efforts with federal and state land management agencies in the development and implementation of land use plans and management actions which are compatible with the best interests of Modoc County and its citizens. The plan is designed to facilitate continued, revitalized and varied use of federally and state managed lands in the county.

The land use committee, the board, and the citizens of Modoc County recognize that federal law mandates coordinated planning with local government of federally managed

lands and they positively support varied uses of these lands and also state managed lands. Such varied use necessarily includes continued maintenance of the historic and traditional economic uses which have been made of federally managed and state managed lands within the county. It is therefore the policy of Modoc County that the land use committee and the board work constantly to assure that federal and state agencies shall inform the board of all pending or proposed actions affecting local communities and citizens and coordinate with the board in the planning and implementation of those actions.

Such coordination of planning is mandated by federal laws governing land management, including but not limited to the following particulars:

BUREAU OF LAND MANAGEMENT

The Federal Land Policy and Management Act, 43 U.S. Section 1701, declared the National Policy to be that "the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other federal and state planning efforts." See 43 USC Section 1701 (a) (2).

48 U.S.C. Section 1712 (c) sets forth the "criteria for development and revision of land use plans." Section 1712 (c) (9) refers to the coordinate status of a county which is engaging in land use planning, and requires that the "Secretary [of Interior] shall "coordinate the land use inventory, planning, and management activities...with the land use planning and management programs of other federal departments and agencies and of the State and local governments within which the lands are located." This provision gives preference to those counties which are engaging in a land use planning program over the general public, special interest groups of citizens, and even counties not engaging in a land use planning program.

Section 1712 also provides that the "Secretary shall assist in resolving, to the extent practical, inconsistencies between federal and non-federal government plans." This provision also gives preference to those counties which are engaging in the planning process over the general public, special interest groups of citizens, and even counties not engaging in a land use planning program. In view of the requirement that the Secretary [of the Interior] "coordinate" land use inventory, planning and management activities with local governments, it is reasonable to read the requirement of assisting in resolving inconsistencies to mean that the resolution process takes place during the planning cycle instead of at the end of the planning cycle

when the draft federal plan is released for public review.

The section further requires that the "Secretary [of the Interior] shall "provide for meaningful public involvement of state and local governmental officials...in the development of land use programs, land use regulations, and land use decisions for public lands." When read in the light of the "coordinate" requirement of the section, it is reasonable to read "meaningful involvement" as referring to on-going consultations and involvement throughout the planning cycle, not merely at the end of the planning cycle. This latter provision of the statute also distinguishes local government officials from members of the general public or special interest groups of citizens.

Section 1712 (C) (9) further provides that the Secretary of the Interior must assure that the BLM's land use plan be "consistent with State and local plans" to the maximum extent possible under federal law and the purposes of the Federal Land Policy and Management Act. It is reasonable to read this statutory provision in association with the requirement of coordinated involvement in the planning process.

The provisions of Section 1712 (c) (9) set forth the nature of the coordination required by the Bureau with planning efforts by the Indian tribes, other federal agencies, and state and local government officials. Subsection (f) of Section 1712 sets forth an additional requirement that the Secretary of the Interior "shall allow an opportunity for public involvement" which again includes federal, state and local governments. The "public involvement" provisions of Subsection (f) do not limit the coordination language of Section 1712 (c) (9) or allow the Bureau to simply lump local government officials in with special interest groups of citizens or members of the public in general. The coordination requirements of Section 1712 (c) (9) set apart for special involvement those government officials who are engaged in the land use planning process as is Modoc County. The statutory language distinguishing the county because it is engaged in the land use planning process makes sense because of the board's obligation to plan for future land uses which will serve the welfare of all of the people of the county and promote continued operation of the government in the best interest of the people of Modoc County.

Historically, the Congress, the Bureau of Land Management, and the federal courts have recognized that community economic stability is an important consideration in the management of federally managed lands. In interpreting the Taylor Grazing Act, 43 U.S.C. Section 315 et seq. (the Act which created the agency to become known as the Bureau of Land Management) the courts have recognized that the purpose of the Act "is to stabilize the livestock industry and

to permit the use of public range according to needs and qualifications of livestock operators with base holdings." See *Chournos v. United States*, 193 Fd2d 321 (10th Cir. Utah 1951), Cert den. 343 U.S. 977 (1952). In *Red Canyon Sheep Co. v. Ickes*, 98 Fd2d 308 (1938), the Court stated that the purpose of the Taylor Grazing Act is to provide the "most beneficial use possible of public range because the livestock industry of the West is an important source of food supply for the people of the nation." Red Canyon also pointed out that "in the interest of the stock growers themselves" the Act was intended to define "their grazing rights and to protect those rights by regulation against interference."

Similarly, Bureau of Land Management Regulations mandate that the agency coordinate its land use plans with local governments who have adopted comprehensive land use plans of their own:

(1) 43 C.F.R. Section 1601.3-1(a)

In addition to public involvement, the BLM is obligated to coordinate its planning processes with local government land use plans.

(2) 43 C.F.R. Section 1610.3-1(c)(1)

In providing guidance to BLM personnel, the BLM State Director shall assure such guidance is as "consistent as possible with existing officially adopted and approved resource related plans, policies or programs of other State agencies, Indian tribes and local governments that may be affected...."

(3) 43 C.F.R. Section 1610.3-1(e)

The BLM is obligated to take all practical measures to resolve conflicts between federal and local government land use plans.

(4) 43 C.F.R. Section 1610.3-2(a)

The BLM plan must be consistent with officially approved and adopted local land use plans, as long as such local plans are consistent with federal law and regulations.

(5) 43 C.F.R. Section 1610.3-2(e)

Prior to BLM resource management plan or management framework plan approval, the BLM shall submit a list of known inconsistencies between the BLM plans and local plans to the governor.

(6) 43 C.F.R. Section 1610.3-2(c)

The BLM has no duty to make its plan consistent with a local government plan, if the BLM is not notified by the local government of the existence of its local plan.

U.S. FOREST SERVICE

16 U.S.C. Section 1604(a)

The Secretary of Agriculture shall develop, maintain,

and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of state and local governments and other federal agencies.

Forest Service Regulations provide in pertinent part, as follows:

(1) 36 C.F.R. Section 221.3(a)(1)

The Forest Service is obligated to consider and provide for "community stability"¹ in its decision making processes. See also S. Rept. No. 105.22; 30 Cong. Rec. 984 (1897); *The Use Book* at 17.

(2) 36 C.F.R. Section 219.7(a)

The Forest Service is obligated to coordinate with equivalent and related planning efforts of local governments.

(3) 36 C.F.R. Section 219.7(d)

The Forest Service is obligated to meet with local governments, to establish process for coordination. At a minimum, coordination and participation with local governments shall occur prior to Forest Service selection of the preferred management alternative.

(4) 36 C.F.R. Section 219.7(d)

1 "Community stability" is defined as a combination of local custom, culture and economic preservation. As described by the Forest Service:

History and Objects of Forest Reserves

Forest reserves are for the purpose of preserving a perpetual supply of timber for home industries, preventing destruction of the forest cover which regulates the flow of streams, and protecting local residents from unfair competition in the use of the range....

We know that the welfare of every community is dependant upon a cheap and plentiful supply of timber; that a forest cover is the most effective means of maintaining a regular stream flow for irrigation and other useful purposes, and the permanence of the livestock industry depends upon the conservative use of the range

Forest Service, United States Department of Agriculture, *The Use Book*, 13 (1906 ed.).

The Forest Service in its decision making processes is obligated to coordinate² with local governments prior to selection of the preferred management alternative.

(5) 36 C.F.R. Section 219.7(c)

The Forest Service is obligated, after review of the county plan, to display the results of its review in an environmental impact statement. See also 40 C.F.R. Sections 1502.16(c) and 1506.2.

(6) 36 C.F.R. Section 219.7(c)(4)

The Forest Service is obligated to consider alternatives to its proposed alternative if there are any conflicts with county land use plans.

(7) 36 C.F.R. Section 219.7(f)

The Forest Service is required to implement monitoring programs to determine how the agency's land use plans affect communities adjacent to or near the national forest being planned.

COURT CASES UPHOLDING LOCAL LAND USE PLANNING

California Coast Commission v. Granite Rock Co., 480 U.S. 572 (1987)

State land use planning is allowed on federal lands as long as such land use planning does not include zoning. Federal agencies cannot claim "Constitutional Supremacy" if the agency can comply with both federal law and the local land use plan.

Wisconsin Public U.S. Intervenor v. Mortier, 111 S. Ct. 2475 (1991)

When considering preemption, the U.S. Supreme Court will not assume that the state's historic powers are superseded by federal law unless that is the clear manifest purpose of Congress.

ENDANGERED SPECIES ACT

Idaho Farm Bureau Federation, et al. v. Babbitt, No. 93-0168-E-HLR (Dec. 14, 1993)

The Fish and Wildlife Service is required to follow all procedural mandates in the ESA when listing a species as threatened or endangered, including (1) listing the species within one year of publication of the notice of proposed listing, otherwise Fish and Wildlife Service must withdraw the regulation; (2) providing actual notice to local governments prior to listing; (3) providing adequate public review of data used to list the species; and (4) adequately considering and responding to public comments regarding the proposed listing.

2 Coordinate is defined as "equal, of the same rank, order, degree or importance; not subordinate." *Black's Law Dictionary* 303 (5th ed. 1979).

16 U.S.C. Section 1533(b)(5)(A)(ii)

Not less than ninety days before the effective date of the regulation, the Fish and Wildlife Service is required to give actual notice to local governments of its intent to propose a species for listing or change or propose critical habitat.

50 C.F.R. Section 423.16(c)(i)(ii)

Once notified, the local government has the opportunity to comment on the proposed species listing or critical habitat designation.

16 U.S.C. Section 1533(i)

The Fish and Wildlife Service must directly respond to the "State agency".³

16 U.S.C. Section 1533(f)(5)

Other federal agencies must also consider local government and public comments regarding the management of threatened or endangered species.

16 U.S.C. Section 1533(b)(1)(A)

The listing of a species as threatened or endangered by the Fish and Wildlife Service is to be based on the best scientific and commercial data available.

16 U.S.C. Section 1533(b)(i)(A)

The Fish and Wildlife Service shall list species only after taking into account efforts of state or political subdivisions to protect the species.

16 U.S.C. Section 1533(b)(2)

Critical habitat designations must take economic impacts into account. Areas may be excluded as critical habitat based upon economic impacts unless the failure to designate the area as critical habitat would result in extinction of the species.

Douglas County v. Lujan, 810 F. Supp. 1470 (1992)

The Fish and Wildlife Service is required to complete full NEPA documentation when designating critical habitat.

16 U.S.C. Section 1533(f)(1)

The Fish and Wildlife Service shall develop and implement recovery plans for the survival of endangered species unless it finds that such a plan will not provide for conservation of the species.

National Wildlife Federation v. Coleman, 529 F.2d 359 (1976) cert. denied 429 U.S. 979 (1977)

Pursuant to the Endangered Species Act, the Fish and Wildlife Service is responsible for species listing, the designation of critical habitat and the development of

3 Under the ESA, a "State agency" is a division, board, or other governmental entity that is responsible for the management and coacervation of fish, plant or wildlife resources within a State 50 C.F.R. Section 424.02(1).

protective regulations and recovery plans. Once a species is listed, federal agencies have the responsibility to consult with the Fish and Wildlife Service under Section 7 of the ESA. However, once consultation has occurred, the agency is then free to make the final determination. The Fish and Wildlife Service does not have veto power over federal agency actions.

54 Fed. Reg. 554 (January 6, 1989)

The Sensitive Species Program was created on January 6, 1989 by the Fish and Wildlife Service and is implemented by all federal agencies. These federal agencies are to give "special consideration" to those plant and animal species that the Fish and Wildlife Service is considering for listing but lacks the scientific data to list.

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The National Environmental Policy Act requires that all federal agencies consider the impacts of their actions on the environment and on the preservation of the culture, heritage and custom of local government.

16 U.S.C. Section 4331

"It is the continuing responsibility of the federal government to use all practicable means, consistent with other essential considerations of national policy, to...preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice."

The term "culture" is defined as "customary beliefs, social forms, and material traits of a group; the integrated pattern of human behavior passed to succeeding generations." See *Webster's New Collegiate Dictionary* at 277 (1975). A custom is a usage or practice of the people, which, by common adoption and acquiescence, and by long and unvarying habit, has become compulsory and has acquired the force of law with respect to the place or subject-matter to which it relates. See *Bouvier's Law Dictionary*, 417 (1st ed. 1867).

Thus, by definition, the National Environmental Policy Act requires federal agencies to consider the impact of their actions on the custom of the people as shown by their beliefs, social forms, and "material traits." It is reasonable to read this provision of the National Environmental Policy Act as requiring that federal agencies consider the impact of their actions on rural resource dependent counties such as Modoc County where, for generations, families have depended upon the "material traits" of ranching, farming, mining, timber production, wood products, recreation, hunting, fishing and other resource based lines of work for their economic livelihoods.

42 U.S.C. Section 4332(2)(c)

All federal agencies shall prepare an environmental impact statement (EIS) or an environmental assessment (EA), (i.e. a NEPA document for "every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment."

42 U.S.C. Section 4332(C)(iii)

Such EIS or EA shall include, among other things, alternatives to the proposed action.

42 U.S.C. Section 4332(C)

Copies of comments by state or local governments must accompany the EIS or EA throughout the review process.

40 C.F.R. Section 1502.16(c)

Each NEPA document shall include a discussion of possible conflicts between the proposed federal action and local land use plans.

40 C.F.R. Section 1506.2(b)

Federal agencies shall "cooperate to the fullest extent possible" to reduce duplication with state and local requirements. Cooperation shall include:

- (1) Joint planning
- (2) Joint environmental research
- (3) Joint hearings
- (4) Joint environmental assessments

40 C.F.R. Section 1506.2(d)

Environmental impact statements must discuss any "inconsistency of a proposed plan with any approved State or local plans and laws (whether or not federally sanctioned)." Where inconsistencies exist, the EIS should describe the extent to which the agency would reconcile proposed action to the plan or law.

40 C.F.R. Section 1508.20(e)

Mitigation includes (a) avoiding the impact altogether, (b) limiting the degree of the impact, (c) repairing, rehabilitating or restoring the affected environment, (d) reducing the impact by preservation opportunities, or (e) compensating for the impact by replacing or providing substitute resources or environments.

Douglas County v. Lujan 810 F. Supp. 1470 (1992)

A local government, because of a concern for its environment, wildlife, socio-economic impacts and tax base, has standing to sue federal agencies and seek relief for violations of NEPA.

WILD AND SCENIC RIVERS ACT

16 U.S.C. Section 1271

It is Congressional policy to protect "...historic, cultural or other similar values in free-flowing rivers or segments thereof."

16 U.S.C. Section 1279(b)

Wild and scenic river designations on federal lands cannot affect valid existing rights.

16 U.S.C. Section 1282(b)

The Secretary of the Interior, the Secretary of Agriculture, or the head of any other federal agency, shall assist, advise and cooperate with States or their political subdivisions...to plan, protect, and manage river resources. Such assistance, advise, and cooperation may be through written agreements or otherwise.

16 U.S.C. Section 1276(c)

The study of any river for designation under the Act shall be pursued in as close cooperation with appropriate agencies of the affected State and its political subdivisions as possible, [and] shall be carried on jointly if request for such joint study is made by the State...."

16 U.S.C. Section 1281(e)

The federal agency charged with the administration of any component of the national wild and scenic rivers system "may enter into written cooperative agreements with...the appropriate official of a political subdivision of a State for State or local governmental participation in the administration of the component."

16 U.S.C. Section 1283(c)

Wild and scenic river designations cannot affect valid existing leases, permits, contracts or other rights.

16 U.S.C. Section 1277(c)

The federal government is precluded from condemning or taking private land adjacent to a wild or scenic river so long as the local zoning ordinance protects the value of the land.

HISTORIC PRESERVATION ACT REGULATIONS

36 C.R.R. Section 800.5(e)(1)(i)

If a federal, state or local action is determined to have an adverse affect on a historic property, the State and Federal Historic Preservation officer shall consult with the head of the local government, if requested by the local government.

CLEAN AIR ACT

33 U.S.C. Section 1251(g)

Federal agencies shall cooperate with state and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

33 U.S.C. Section 1252(A)

The Environmental Protection Agency "shall, after careful investigation, and in cooperation with other Feder-

al agencies, State water pollution control agencies, interstate agencies, and the municipalities and industries involved, prepare or develop comprehensive programs* for preventing water pollution.

SOIL and WATER RESOURCES CONSERVATION ACT

15 U.S.C. Section 2003(b)

"Recognizing that the arrangements under which the Federal Government cooperates...through conservation districts, with other local units of government and land users, have effectively aided in the protection and improvement of the Nation's basic resources,...it is declared to be the policy of the United States that these arrangements and similar cooperative arrangements should be utilized to the fullest extent practicable...."

16 U.S.C. Section 2008

"In the implementation of this Act, the Secretary [of Agriculture] shall utilize information and data available from other Federal, State and local governments...."

RURAL ENVIRONMENTAL CONSERVATION ACT

16 U.S.C. Section 1508

"[The Secretary [of Agriculture] shall, in addition to appropriate coordination with other interested Federal, State, and local agencies, utilize the services of local, county, and State [soil] conservation committees...."

RESOURCE CONSERVATION ACT OF 1981

16 U.S.C. Section 3411(5)

Congress finds that solutions to "chronic erosion-related problems should be designed to address the local social, economic, environmental, and other conditions unique to the area involved to ensure that the goals and policies of the Federal Government are effectively integrated with the concerns of the local community...."

16 U.S.C. Section 3432

"[The local unit of government is encouraged to seek information from and the cooperation of....(2) agencies of the Department of Agriculture or other Federal agencies...."

16 U.S.C. Section 3451

"It is the purpose of this subtitle to encourage and improve the capability of State and local units of government and local nonprofit organizations in rural areas to plan, develop, and carry out programs for resource conservation and development."

16 U.S.C. Section 3455

"In carrying out the provisions of this subtitle, the Secretary [of Agriculture] may...(2) cooperate with other

departments and agencies of the Federal Government, State, and local units of government, and with local nonprofit organizations in conducting surveys and inventories, disseminating information, and developing area plans...."

16 U.S.C. Section 3456(a)(4)

The Secretary of Agriculture may provide technical and financial assistance only if "the works of improvement provided for in the area plan are consistent with any current comprehensive plan for such area."

PRESIDENTIAL EXECUTIVE ORDER 12866 - REGULATORY
PLANNING AND REVIEW (September 30, 1993)

Introduction

"The American People deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves health, safety, environment, and well being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory policies that respect the role of State, local and tribal governments; and regulations that are effective, consistent, sensible and understandable. We do not have such a system today."

Section 1(b)(9)

"Wherever feasible, agencies shall seek views of appropriate State, local and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local and tribal regulatory governmental functions."

Section 5(b)

"State, local and tribal governments are specifically encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification to be otherwise inconsistent with the public interest."

Section 6(a)(1)

"In particular, before issuing a notice of proposed rule making, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those who are expected to be burdened by any regulation

(including, specifically, State, local and tribal officials)....Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rule making."

PRESIDENTIAL EXECUTIVE ORDER 12630 - GOVERNMENTAL ACTIONS AND INTERFERENCE WITH CONSTITUTIONALLY PROTECTED PROPERTY RIGHTS (March 15, 1988)

Section 1(a)

"The Fifth Amendment of the United States Constitution provides that private property shall not be taken for public use without just compensation....Recent Supreme Court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have an impact on constitutionally protected property rights, have also reaffirmed that governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required."

Section 1(c)

"The purpose of this Order is to assist Federal departments and agencies in undertaking such reviews and in proposing, planning, and implementing actions with due regard for the constitutional protections afforded by the Fifth Amendment and to reduce the risk of undue or inadvertent burdens on the public fisc resulting from lawful governmental action."

Section 3(c)

"The Just Compensation Clause [of the Fifth Amendment] is self-actuating, requiring that compensation be paid whenever governmental action results in a taking of private property regardless of whether the underlying authority for the action contemplated a taking or authorized the payment of compensation. Accordingly, governmental actions that may have significant impact on the use of value or private property should be scrutinized to avoid undue or unplanned burdens on the public fisc."

In accordance with these federal laws regarding land use planning and the protection of private property interests, the land use committee and the board recognize that it is their duty and obligation to enter into official land use planning activities in order to participate equitably and fully with the federal management agencies in the effort to maintain and revitalize the various multiple uses of the federally managed lands. To that end, the committee has developed, and the board adopts, this Land Use Plan which includes General Planning Guidelines as well as Management Actions regarding the various multiple uses of federally managed lands in Modoc County.

While no state statute specifically mandates coordination of planning by state agencies regarding management of state lands, such coordination is implicitly contemplated by the provisions of Title 7 of the Government Code of California, entitled Planning and Land Use and contemplated by the very purpose of that law as set forth in Govt. Code Section 65030:

"The Legislature finds and declares that California's land is an exhaustible resource, not just a commodity, and is essential to the economy, environment and general well-being of the people of the State of California. It is the policy of the state and the intent of the Legislature to protect California's land resource, to insure its preservation and use in ways which are economically and socially desirable in an attempt to improve the quality of life in California."

And in Government Code Section 65300.7, which reads as follows:

"The Legislature finds that the diversity of the state's communities and their residents requires planning agencies and legislative bodies to implement this article in ways that accommodate local conditions and circumstances, while meeting its minimum requirements."

And in Government Code Section 65300.9, which reads as follows:

"The legislature recognizes that the capacity of California cities and counties to respond to state planning laws varies due to the legal differences between cities and counties, both charter and general law, and to differences among them in physical size and characteristics, population size and density, fiscal and administrative capabilities, land use and development issues, and human needs. It is the intent of the Legislature in enacting this chapter to provide an opportunity for each city and county to coordinate its local budget planning and local planning for federal and state program activities, such as community development, with the local land use planning process, recognizing that each city and county is required to establish its own appropriate balance in the context of the local situation when allocating resources to meet these purposes."

Similarly, provisions of the California Environmental Quality Act permit the local decision making body to override significant environmental impacts of a project or activity if it finds that overriding economic or social factors exist. [Public Resources Sections 21002.1 and 21081]

The foregoing provisions and numerous other provisions of California statutory and decisional law provide a base for the board to call upon state agencies to coordinate their planning efforts with the county. It could only be

for such a purpose that the California Legislature established the duty of a county to conduct a comprehensive planning process designed to prepare, implement, review and update a comprehensive general plan to include all land within the boundaries of the county and land outside the county boundaries which bears relation to its planning.

Modoc County has previously developed its General Plan related to privately owned lands in the county. This Land Use Plan is now directed toward management of federally and state managed lands. With adoption of this Plan, the county puts in place a comprehensive plan which includes all land within the jurisdiction of the board, as directed by Govt. Code Sections 65300 et seq. The statements of purpose, of duty to plan and legislative intent certainly contemplate coordination by state agencies of their planning efforts with the local planning efforts of Modoc County.

The land use committee and the board now call upon the federal and state management agencies to coordinate in advance with the board any proposed actions which will impact either the federally and state managed lands in Modoc County, the private property rights and private property interests including investment backed expectations of citizens of the county, the economic stability and historically developed custom and culture of the county, or the provisions of this Land Use Plan. Such management agencies are requested to so coordinate their actions by providing to the board in a timely manner, prior to taking official action, a report on the proposed action, the purposes, objectives and estimated impacts of such action, and the economic impact.

In other words, the land use committee and the board request no more from the federal management agencies than what is required by the federal laws governing their management processes as well as the above-mentioned Executive Orders and implemented by guidelines prepared for all federal agencies by the Attorney General of the United States.

The land use committee and the board request no more from state management agencies than what was clearly intended by the California State Legislature through enactment of Title 7, of the Government Code, entitled Planning and Land Use.

In exchange for compliance with federal law by the federal management agencies, the land use committee and the board commits to a positive planning process through which the county will maintain its commitment to varied uses of the federally managed lands. In exchange for participation by the state management agencies consistent with the Plan, the land use committee and the board commit to a positive planning process through which the county will equitably

consider the best interest of all of the people of the state of California in the use of state managed lands.

Through the land use planning process Modoc County commits itself to attempting to assure that all natural resource decisions affecting the county shall be guided by the principles of maintaining and revitalizing various uses of federally managed and state managed lands, protection of private property rights and private property interests including investment backed expectations, protection of local historical custom and culture, protection of the traditional economic structures in the county which form the base for economic stability for the county, the opening of new economic opportunities through reliance on free markets, and protection of the right of the enjoyment of the natural resources of the county by all citizens of the county and those communities utilizing those natural resources within the county. Modoc County is convinced that resource and land use management decisions made in a coordinate manner by federal management agencies, state management agencies and county officials will not only firmly maintain and revitalize various uses of federally and state managed lands in Modoc County but will enhance environmental quality throughout the county.

The General Planning Guidelines set out in Section 19.02.040 present the standards of law, fact, and planning by which the board will be guided in its official capacity as the executive authority of the county. The Guidelines include Constitutional and statutory standards for land management by which the land use committee and the board will be guided.

The Management Actions set forth in Section 19.02.050 will contain, where appropriate, management alternatives designed to achieve maintenance and improvement of varied use. They will also contain statements of actions which may be taken by the board to implement objectives set by the land use committee and the board.

The Plan is only the formalization of the commencement of the planning process as to the federally and state managed lands in Modoc County. The process itself is ongoing, and will require the land use committee and the board to become involved with analysis and evaluation of all stages of the planning cycles followed by federal and state management agencies, including plan development as well as implementation which includes monitoring and evaluation of plan implementation. (Ord. 311 §1(part), 1995)

19.02.040 Primary planning guidelines. A. COMMUNITY STABILITY One of the biggest problems facing local governments today is loss of tax base. In order for any community to provide needed schools, health care, police protection and other services, industry and commerce within

the community must be encouraged and strengthened. Suffocating governmental regulations are not only destroying local enterprise, but eroding the most important feature of freedom itself, the right of people to the control and use of their own property. A primary guideline and overriding intent of this Plan is to foster cooperation and coordination with federal and state management agencies and all adjacent counties where there is a community of interests, including but not limited to grazing, farming, timber, mining, recreation, wildlife and all other activities related to and reliant upon the availability of natural resources on federal and state managed lands within their respective jurisdictions.

B. CONSTITUTIONAL PRINCIPLES AND PRIVATE PROPERTY

The land use committee, the board and the people of Modoc County accept, support and sustain the Constitutions of the United States and the state of California. The Constitution of the United States, Article 1, Section 8, clauses 17 and 18 limits the authority of the federal government to own only specific lands. We hereby reaffirm our rights that all lands in Modoc County not so specifically designated in the Article 1, Section 8, clauses 17 and 18 of the United States Constitution be managed in coordination with the land use committee, the board and thereby the citizens of this county. Further, the land use committee, the board and the people of Modoc County reaffirm the fundamental rights of mankind as enumerated in the Declaration of Independence and acknowledge the limited nature of government as intended by the nation's founding fathers. Based on these cherished traditions, we declare that all natural resource decisions affecting Modoc County shall be guided by the principles of protecting private property rights, protecting local custom and culture, maintaining traditional economic structures through self-determination, opening new economic opportunities through reliance on free markets, and enhancing environmental quality.

C. LAND DISPOSITION, ACQUISITION AND USE POLICIES

Recognizing that land is essential to local industry and residence, it shall be the policy of this county that the design and development of all federal and state land dispositions and acquisitions, including land adjustments and exchanges, be carried out to the benefit of the citizens of Modoc County to ensure the following:

1. The county shall suffer no net loss in tax revenue;
2. That private property interests are protected and enhanced;
3. The citizens of Modoc County shall suffer no adverse aggregate economic impacts;
4. To increase opportunities for local economic development by increasing the amount of private and non-federal and/or state land within the county;

5. To increase opportunities for local economic development by increasing the private use of federal and/or state controlled land within the county;

6. Federal and/or state land agencies should not acquire any private lands or rights in private lands within Modoc County without first ensuring the items listed above;

7. That federally and/or state managed lands that are difficult to manage or which lie in isolated tracts should be considered for exchange or sale;

8. The general public and the Modoc County board of supervisors shall be notified of, consulted about, and otherwise involved in all federal and state land adjustments in Modoc County. Modoc County shall review all proposed changes to see if the proposal is in the best interest of the county;

9. Modoc County shall review and make recommendations on proposed public land withdrawals for hazardous and non-hazardous waste storage as well as the types of such waste;

10. Before federal and state land agencies can change land use, impact studies on uses shall be conducted at the expense of the agency proposing the change and mitigation measures adopted in coordination with Modoc County. Impact studies shall as needed address community stability, local custom and culture, grazing rights, flood prone areas, access, and any other area identified as a concern to the local community.

D. NATIVE AMERICAN CULTURAL CONCERNS

The culture associated with Native American activities in Modoc County is necessary to the livelihood and well-being of Native Americans in Modoc County. Therefore it is the policy of Modoc County to support and protect their inherent rights, while still protecting private property rights.

1. Opportunities for Native American activities shall be continued at levels consistent with the historical customs; the protection of property rights and sound resource management policies.

2. Federal and state government shall not unreasonably obstruct historic Native American cultural activities on their respective lands.

E. WATER RESOURCES AND POLICES Modoc County recognizes that the protection and development of its water resources are essential to its short and long term economic and cultural viability. It is therefore the policy of Modoc County to ensure the following:

1. The protection of existing water rights and water uses within the county is of primary importance to the county's economic and cultural well-being. Therefore, transfers in water use shall be carefully considered in

relationship to the history, traditions, and culture of Modoc County;

2. That any federally proposed designation of Wild and Scenic Rivers and all federal policies regarding riparian management in Modoc County shall be coordinated with the land use committee and the board;

3. That Modoc County should prepare plans for the protection of all threatened and endangered species within its boundaries and that federal agencies managing land, waterways and wetlands containing such species shall coordinate their management activities and plans with the land use committee and the board;

4. That Modoc County should consider water markets for existing as well as future water rights for agricultural, municipal, industrial, and domestic purposes;

5. That Modoc County should consider alternative uses of water, including but not limited to recreation and hydroelectric power;

6. That any regional water plan(s) shall be assessed and may be considered for inclusion as part of this plan;

7. That Modoc County should promote and should be actively engaged in providing opportunity for the development of water-based recreation within the county;

8. That Modoc County should review all water policies to determine if they are appropriate and adequate;

9. That the land use committee and the board shall be notified of all state, regional, interstate and federal actions that have any impact on the water of the county prior to such actions being initiated. In addition, such proposed actions, including federally proposed Wild and Scenic River designations, shall be coordinated with the Modoc County board of supervisors and this Plan and the Modoc County General Plan prior to adoption and implementation. It is the intent of the county to develop, plan and be part of the management with federal and state agencies in the planning and management of the county's water resources and all other natural, cultural, and economic resources;

10. That Modoc County should develop its water use policy ensure both water quantity and water quality and to ensure that such policy does not adversely impact water users inside the county;

11. That Modoc County may develop Wild and Scenic River policies of its own design. Such policies would form the basis for input on how such Wild and Scenic lands will be managed by the federal and state governments;

12. That Modoc County should develop riparian

management plans in concert and coordination with landowners, ranchers and the appropriate state and federal agencies.

F. AGRICULTURAL POLICIES

The custom and culture associated with agricultural production in Modoc County is necessary to the livelihood and well being of its citizens. Therefore, it is the policy of Modoc County to protect agricultural land and promote the continuation of agricultural pursuits by protecting private property rights, relying on self determination, and ensuring open market conditions. The land use committee and the board seek to ensure all of the following:

1. That opportunities for agriculture on federal and state lands shall be continued at levels consistent with historical custom and culture and the protection of equitable property rights, and sound management practices;
2. That federal and state governments shall not obstruct agricultural opportunities on their lands respectively managed by them;
3. That Modoc County requires federal and state land managing agencies to coordinate with the land use committee, via its appropriate subcommittees on all matter affecting livestock grazing and farming on all federal and state managed lands;
4. That incentives for improved grazing lands and promoting good land stewardship shall be developed through:
 - a. Encouraging permittee ownership of range improvements,
 - b. Appropriate fee schedules,
 - c. Allowing subleasing of equitable property rights,
 - d. Allotment plan flexibility, and
 - e. Increasing grazing capacity or allowing other economic benefits to accrue to permittee making investments in range betterments;
5. That incentives for improving grazing lands and promoting good land stewardship shall be developed;
6. That Modoc County advocates market and incentive systems to reduce administrative and grazing costs on federal and state lands.

G. PEST CONTROL POLICIES

Modoc County advocates the control of predatory animals, rodents and noxious weeds on all state and federal lands in accordance with local custom and culture, protecting bordering private lands and within the boundaries of good husbandry practices and sound environmental restraints not to exclude chemical control and seeks to ensure all of the following:

1. That Modoc County should establish an animal damage control plan for the protection of livestock and crops;

2. That government agencies will coordinate their plans with Modoc County with regard to pest control actions and regulations;

3. That government agencies shall be required to prepare and implement plans for controlling predatory animals, rodents and noxious weeds in accordance with proven and recognized husbandry practices;

4. That Modoc County recognizes trapping as a historical and environmentally sound method of controlling predatory animals and reducing property damage and encourages its use;

5. That Modoc County advocates the control of disease-bearing vectors because they are a recognized threat to public health.

H. FORESTRY AND FOREST PRODUCTS POLICIES

The custom and culture associated with forest and forestry products production in Modoc County is necessary to the livelihood and well-being of its citizens. Therefore, it is the policy of Modoc County to protect forest resources and promote the continuation of a sustainable forestry products industry by providing economic opportunity, relying on self-determination, and ensuring open market conditions. The board requires a forest management policy and seeks to ensure all of the following:

1. That Modoc County promote multiple use of public forest resources to realize sustainable and continuous provision of timber, forage, firewood, wildlife, fisheries, recreation and water. Such sustainable levels assume that minimal lands be given single use or restrictive designations and that the maximum areas of land be outside Wilderness Areas and be available for active and sound management;

2. That Modoc County advocate the harvesting of a wide range of non-Wilderness timber stand age classes to promote more productive forests. Modoc County advocates the prompt replanting of harvested areas;

3. That Modoc County support the current system of "gross in lieu" payments from revenues generated from federal and state lands within the county;

4. That Modoc County support the transportation of logs and manufactured forest products over federal, state and county roads and highways within the county;

5. That Modoc County advocate a broad range of reforestation tools and timber stand improvement tools and timber harvesting practices in line with prudent resource protection practices;

6. That Modoc County advocate the early detection and control of insect infestations;

7. That Modoc County support the detection and management of forest fires through immediate cooperative response of all firefighting agencies;

8. That Modoc County support the use of prescribed burns as a management tool for resource enhancement;

9. That Modoc County support the prompt salvage of forest losses due to fire, insect infestation or other events;

10. That Modoc County support the education of both residents and visitors to wise and productive forest uses;

11. That Modoc County support the program of Timber Production Zoning (TPZ) and promotes the understanding by forests residents of the compatibility of timber harvesting on adjacent lands;

12. That Modoc County support the local manufacturing of forest products from Modoc National Forest lands recognizing that the forest products industry within the county is heavily dependent on United States Forest Service managed timber.

I. CULTURAL RESOURCES, RECREATION, WILDLIFE, FISHERIES AND WILDERNESS POLICIES

Modoc County supports varied use of public and private recreational and cultural opportunities compatible with local custom and culture and within the constraints of private property rights and the quiet enjoyment thereof, and local self-determination and endorses all of the following policies:

1. Modoc County should oversee protection and recovery of all federal and state listed threatened, endangered or candidate species and their habitat;

2. Federal and state agencies shall prepare a plan in coordination with Modoc County before the introduction or reintroduction of any species into public or private land which is likely to impact Modoc County;

3. Modoc County requires coordination of federal and state land and wildlife and fishery management and enforcement agencies with the Modoc County Fish, Game and Recreation Commission;

4. No additional Wilderness Areas shall be designated in Modoc County without prior planning coordination with Modoc County;

5. Modoc County advocates the expeditious review and determination of the status of any Wilderness Study Areas in the county.

J. MINERAL RESOURCES AND POLICIES

Modoc County recognizes that the full development of its abundant mineral resources is desirable and necessary to the economic well being of the county, state and the nation. Therefore, it is the policy of Modoc County to

encourage mineral exploration and development which is:

1. Consistent with local history, custom and culture;
2. Beneficial to the county's economic stability and well-being;
3. Beneficial to Modoc County, the state of California and our nation.

Further, it is the intent of this policy to eliminate unreasonable barriers, prohibitions and impediments to such exploration and development, except for those that arise naturally from a regime of secured private property rights and free market conditions.

It is the further policy of Modoc County to support the retention of and compliance with the 1872 mining law and to support large and small scale mining and exploration consistent with sound economic and environmental practices.

It is the further policy of Modoc County that all state and federal agencies coordinate reclamation plans with Modoc County.

K. ARCHEOLOGICAL RESOURCES

It is the policy of Modoc County that archeological studies required by the federal or state agencies shall be coordinated with the county, that archeological studies shall be paid for by the agency requesting the study and that all studies shall be done in a timely manner.

L. ENERGY RESOURCES POLICY

There are many energy resources on both private and government managed lands within Modoc County. These resources include but are not limited to geothermal, biomass, hydro-electric, and solar. These resources hold a promise of great economic potential which is of importance to the citizens of this county. The county planning commission has included an Energy Element in the existing General Plan and it is the policy of the land use committee and the board that this Land Use Plan will reflect coordination and cooperation with the County General Plan Energy Element.

M. ACCESS AND TRANSPORTATION POLICIES

It is the policy of Modoc County to develop and maintain a transportation plan that optimizes accessibility and that minimizes the cost of movement between all communities and across federal and state managed lands within the county.

Access to or across federal and state managed land shall not entail encumbrances or restrictions on private property rights. (Ord. 311 §1(part), 1995)

19.02.050 Management actions--Interagency notification. It is the nature and intent of Modoc County government land management planning to protect the custom and

culture of county citizens through protection of private property rights, the facilitation of a free market economy, and the establishment of a process to ensure self-determination by local communities and individuals. It is the policy of Modoc County that federal and state agencies shall inform local governments of all pending actions, both within and without the boundaries of Modoc County, affecting local communities and citizens and to coordinate with them in the planning and implementation of those actions.

The Modoc County board of supervisors, when affected by such actions, shall be consulted and coordinated with in accordance with the laws of California and the laws of the United States.

As stated in federal and state laws, all federal and state agencies shall comply with the Plan and coordinate with the board of supervisors for the purpose of planning and managing federal and state lands within the geographic boundaries of Modoc County, California. Federal and state agencies proposing actions that will impact the Plan shall prepare and submit in writing, and in a timely manner, report(s) on the purposes, objectives and estimated impacts of such actions, including economic, to the Modoc County board of supervisors. These report(s) shall be provided to the Modoc County Land Use Committee, C/O The Modoc County Planning Department, 202 West Fourth Street, Alturas, CA 96101, for review and recommendation with regard to appropriate action to be taken by the county. (Ord. 311 §1(part), 1995)

19.02.060 The continuing process. The land use committee and the board recognize that the General Planning Guidance and the Action Alternatives set forth in this Land Use Plan constitute the continuation of a constantly ongoing process.

At each stage of the continuing planning process, the land use committee and the board will consider and review the Planning Guidance and Action Alternatives set forth in this chapter.

Further planning alternatives will be developed and added to the plan. The ongoing planning process will include consideration of all historical and current land uses in Modoc County. The land use committee has to date designated the following subcommittees to consider planning guidance and action alternatives relative to all identified uses and the impact upon them of management plans for the federally and state managed lands. (Ord. 311 §1(part), 1995)

19.02.070 The use committee make-up. A. All members of the land use committee shall be registered voters of Modoc County and shall not be actively employed by any federal and/or state resource management agency.

B. Upon adoption of the ordinance codified in this chapter, the land use committee shall be made up of its existing membership, together with such additional members as the board shall desire to appoint, it being understood that the total membership of the committee shall not exceed twenty-five persons at any given time.

C. No more than fifteen of the original members of the land use committee shall be appointed for a term of four years and no more than ten of the original members of the land use committee shall be appointed for a term of two years; after which all members of the land use committee shall be appointed for a two year term by the board.

It shall be the responsibility of the board to ensure that the land use committee has adequate geographic and resource interest representation.

In order to fulfill its role, the land use committee, as a whole must have both the knowledge of all the resource issues in the county and a working knowledge of this specialized land use planning process.

In order to ensure continuity and to maintain its required diversity of expertise, vacancies on the land use committee shall be filled by board appointees knowledgeable in those subject areas deemed essential by the land use committee to protect the broad based interests of the county and its citizens.

D. The land use committee shall elect a chairperson, vice-chairperson and secretary, from its membership and shall divide itself into the following initial subcommittees:

1. Livestock committee;
2. Wildlife committee;
3. Water committee;
4. Timber committee;
5. Mining committee;
6. Farming committee;
7. Recreation and business committee;
8. Environmental committee.

E. Each member of the land use committee shall serve on one or more subcommittees.

F. Each subcommittee shall select a chairperson and vice-chairperson, who shall be entitled to select such advisory members as they shall from time to time deem necessary. (Ord. 311 §1(part), 1995)

19.02.080 Severability. If any provision of this chapter or the application thereof is held invalid, such invalidity does not affect any other provision of this chapter which can be given effect without the invalid provision or application, and to those ends the provisions of this chapter are severable. (Ord. 311 §1(part), 1995)